

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

BART D. CEZAR

v.

WILLIAM D. SMITH, ESQ.

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Civil No. JFM-04-3966

MEMORANDUM

Defendant has filed a motion to dismiss on the ground that plaintiff's claim is barred by limitations.

Plaintiff is correct that defendant's motion is procedurally defective. The motion cannot be considered as a motion to dismiss because it relies upon facts outside of the complaint. As a motion for summary judgment, it is not supported by a proper affidavit.

If defendant contends that he sent the collection letter more than one year before plaintiff filed his prior action in the District Court of Maryland, he should submit an affidavit based upon admissible evidence establishing the relevant facts on or before December 19, 2005. In the interim, I will defer decision on the pending motion.

Date: December 12, 2005

/s/

J. Frederick Motz

United States District Judge